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Allstate Insurance Company, A Corporation v. Richard Bruce Anderson : Response To Petition For Rehearing

Utah Supreme Court

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Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. L.E. Midgley; Attorney for Plaintiff- Appellant N. George Daines and David R. Daines; Attorneys for Defendant-Respondent

Recommended Citation

Legal Brief, *Allstate v. Anderson*, No. 16411 (Utah Supreme Court, 1980).
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IN THE SUPREME COURT OF THE
STATE OF UTAH

ALLSTATE INSURANCE COMPANY)

Plaintiff and Appellant *

vs.)

RICHARD BRUCE ANDERSON, *

Defendant and Respondent)

*

Case No. 16411

RESPONSE TO PETITION FOR REHEARING

N. GEORGE DAINES
128 North Main
Logan, UT 84321

Attorney for Defendant
and Respondent

L. E. MIDGLEY
320 South Third East, Suite 3
Salt Lake City, UT 84111

Attorney for Plaintiff-
Appellant, Allstate Insurance
Company

FILED

MAR 19 1980

Clerk, Supreme Court, Utah

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320 South Third East, Suite 3
Salt Lake City, UT 84111

Attorney for Plaintiff-
Appellant, Allstate Insurance
Company

COMES NOW Defendant-Respondent and responds to Plaintiff's Appellant's Petition for Rehearing as follows:

POINT I

PLAINTIFF-APPELLANT'S PETITION MISSTATES THE FACTS IN THE INSTANT ACTION

Appellant alleges in its Brief that the Respondent and Travelers Insurance Company agreed through their attorneys that the settlement included the subrogation moneys to Allstate, Appellant herein. To support this assertion, Appellant quotes the letter of Attorney Bennett and then flatly states that the parties so agreed. Appellant's Petition at p.3. That is not a fact before this Court, it was hotly contested in the trial court. The trial court found:

- 1) That Allstate advised Defendant's attorneys that they were not to represent Allstate.
- 2) That Allstate would pursue its own remedy against Travelers.
- 3) That Allstate would arbitrate its claim.
- 4) That Defendant's attorneys by their complaint did not seek any recovery for the no-fault benefits paid.
- 5) That Allstate never changed its position.

MEMORANDUM DECISION. Appellant's Petition would do well to quote all of the correspondence between Attorney Bennett and Defendant's attorneys wherein it is clear that Attorney made an erroneous assumption and was promptly so informed by Defendant's attorneys.

POINT II

RESPONDENT HAS OBTAINED NO DOUBLE RECOVERY

Appellant asserts in its Brief that Respondent will receive a double recovery. The trial courts memorandum decision states:

"Defendant settled for less than the full coverage of the tortfeasor's policy which he may not have been willing to do had he known that he was also representing Plaintiff's interest."

Surely this Respondent receives no windfall or double recovery, as is the case with most injured parties.

POINT III

RESPONDENT RELYS ON ITS ORIGINAL BRIEF AS TO OTHER ISSUES RAISED BY APPELLANT'S PETITION

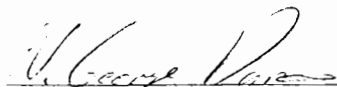
CONCLUSION

Respondent was carefully directed by Appellant not to represent Appellant. Respondent followed that advice to the letter, his complaint excludes the no fault payments. A settlement is reached on that complaint. The tortfeasor's attorney tries to divert a portion of the money to Appellant. Respondent refuses to do so. Appellant thereupon sues the Respondent urging that it should turn over some \$2000.00. Appellant having specifically directed Respondent not to represent it now urges that Respondent does represent it and one might note that Appellant is not offering to pay even a pro rata cost of effecting that recovery.

The Respondent, an injured victim, stands before this Court with a partial recovery for a permanent injury effects; by his own expense, let equity be done.

DATED this 18th day of March, 1980.

Respectfully Submitted:



N. GEORGE DAINES
Attorney for Defendant and
Respondent

CERTIFICATE OF SERVICE

This is to certify that on the 18th day of March, 1980,
I mailed, postage prepaid, two copies of this Response to
Petition for Rehearing to L. E. Midgley, Attorney for Plaintiff-
Appellant at 320 South Third East, Suite 3, Salt Lake City,
UT 84111.

Lamar P. Goodsell